

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Johnny P. Crockett,	:	
	:	Civil Case No. 2:13-cv-658
Petitioner	:	Criminal No. 2:99-cr-104-03
v.	:	Judge Graham
United States of America,	:	Magistrate Judge Abel
Respondent	:	

### **Report and Recommendation**

Petitioner Johnny P. Crockett, a prisoner at the McKean Federal Correctional Institution, Bradford, Pennsylvania, brings yet another action for writ of habeas corpus under 28 U.S.C. §2255. This matter is before the Magistrate Judge for preliminary consideration under Rule 4, Rules Governing Section 2255 Cases in United States District Courts.

On October 4, 2005, Crockett filed a motion to vacate sentence under 28 U.S.C. § 2255. On March 5, 2007, the Court filed an Opinion and Order dismissing the petition. On August 10, 2009, Crockett filed a notice of appeal. On October 13, 2009, the United States Court of Appeals for the Sixth Circuit dismissed Crockett's appeal as untimely. (Doc. 259.)

On July 20, 2012, Crockett filed a motion to vacate sentence under 28 U.S.C. § 2255 (doc. 267). The court transferred the petition to the United States Court of Appeals for the Sixth Circuit (doc. 276), and the Court of Appeals denied Crockett leave to file a successive petition (doc. 278).

Now Crockett has filed a petition relying on the recent decision in *Alleyne v. United States*, 133 S.Ct. 2151, 2155 (2013) to allege that he is actually innocent of a violation of 18 U.S.C. § 924(c)(1)(C). This is a successive petition for writ of habeas corpus. Under the provisions of 28 U.S.C. § 2255(h), a second or successive petition cannot be filed in the district court unless petitioner files an application in the court of appeals and that court issues an order authorizing the filing of the petition.

The Magistrate Judge RECOMMENDS that under the procedures adopted in *In re Jonathan Sims*, 111 F.3d 45, 47 (6th Cir. 1997) this Court TRANSFER this case to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. §1631.

If any party objects to this Report and Recommendation, that party may, within ten (10) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. See 28 U.S.C. §636(b)(1)(B); Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to have the district judge review the *Report and Recommendation de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

s/Mark R. Abel  
United States Magistrate Judge